

New Brazilian Gas Law: Chart of Most Relevant Changes

<p>Authorization Regime for Gas Transportation and Storage</p>	<ul style="list-style-type: none"> • Under the gas legislation currently in force in Brazil, Law No. 11,909/09 (“Gas Law”), the gas transportation activities are subject to the concession regime, preceded by a public bid process. The New Brazilian Gas Law defines authorization as the exclusive granting regime for gas transportation activities in Brazil, which include construction, expansion, operation and maintenance of gas transportation facilities. • The authorization regime will also apply to gas storage activities, which were also subject to the concession regime under the Gas Law and underdeveloped in Brazil. • The authorization regime is simpler than the concession regime since it does not require a full public bid procedure, although a simplified public bid (<i>chamada pública</i>) may apply in cases of construction or expansion of gas transportation pipelines.
<p>Transportation Unbundling Rules</p>	<ul style="list-style-type: none"> • The New Brazilian Gas Law establishes corporate restrictions among the gas industry agents, preventing transporters from having (i) indirect or direct corporate control or (ii) an affiliation relationship with companies or consortiums performing activities of exploration, development, production (E&P), importation, shipment and commercialization of natural gas. Regasification and liquefaction activities are not within the scope of the restriction, and gas distribution is subject to different rules, as detailed below. • Under Brazilian Corporation Law (Law No. 6,404/76), “affiliation” means the relationship with companies in which the investor has significant influence, which is assumed if (i) the investor holds 20 percent or more of the voting capital of the company or (ii) the investor holds or exercise the power to participate in the financial and operating policy decisions of the company, even though not controlling it.
<p>Entry-Exit Model for Gas Transportation Capacity</p>	<ul style="list-style-type: none"> • Currently, shippers have to contract the gas transportation capacity of each “piece” of the gas pipeline infrastructure (known as the “point-to-point” model), considering the physical flow of the molecule within the transportation system, “congesting” the transportation capacity and promoting an inefficient use of the infrastructure. • The New Brazilian Gas Law allows shippers to book capacity rights independently at the so called “entry” and “exit” points, creating gas transportation through zones, supported by virtual trading points (virtual hubs). The new model intends to reduce the transaction costs and complexity for gas transportation services.
<p>Negotiated Third-Party Access to Essential Facilities</p>	<ul style="list-style-type: none"> • The New Brazilian Gas Law grants third-party access not only to gas transportation pipelines (which already existed under the Gas Law) but also to essential facilities (gas offloading systems, gas processing facilities and LNG terminals). Such access shall be negotiated in good faith and in a non-discriminatory manner by the facilities’ owners, who will retain preference for using the facilities.

	<ul style="list-style-type: none"> • In addition, the National Agency of Petroleum, Natural Gas and Biofuels – ANP (“ANP”) will regulate the third-party access to gas transportation pipelines, establishing the conditions and criteria for the availability of transportation capacity and its contracting. The New Brazilian Gas Law acknowledges ANP’s authority to set forth mandatory mechanisms for the availability of capacity (for the granting of third-party access) if the continuous use of the gas transportation capacity is not proved by a given shipper.
<p>Piped Gas Distribution</p>	<ul style="list-style-type: none"> • The New Brazilian Gas Law does not affect the competent authority granted by the Brazilian Federal Constitution to Brazilian states to regulate piped gas distribution services, preserving the distributors' prerogative to construct the gas distribution infrastructure to provide gas distribution services to free consumers, self-producers or self-importers, as provided by the Gas Law. • However, the New Brazilian Gas Law prevents companies or consortiums performing activities of exploration, development, production, importation, shipment and commercialization of natural gas from having access to sensitive information from piped gas distribution companies or having concessions to operate such companies.

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